

O & S Trucking, Inc.

3769 E. Evergreen • Springfield, MO 65803
• Telephone (417) 864-4780 •
Nationwide WATS (800) 955-3411

DEPARTMENT OF TRANSPORTATION

98 JUN 18 AM 11:30

DOCKET SECTION

June 16, 1998

Docket No. FHWA 98-3706 -18

Docket Clerk

U.S. DOT Dockets

Room PL-40 1

400 Seventh St. S.W.

Washington, D.C. 20590-0001

RE: Comments of O & S Trucking, Inc. concerning the above Docket FHWA 98-3706

O & S Trucking, Inc. of Springfield, MO has had its authority since 1983. Operating with approximately 190 trucks, being a mixture of independent contractors and company owned equipment, we have always taken the safety of our people and the general public very seriously. We were recently honored with the Truckload Carriers Association **Grand Prize Winner in the National Fleet Safety Contest** for small carriers. We have been actively involved in areas that can help the industry and FHWA come together to revise the 50 year old regulations that we, as a carrier, must adhere. This Docket, under the present proposal relating to the Hours of Service of Drivers and the Supporting Documents is of significant concern to our company.

We, as have many carriers, invested significant financial and resource investments in the area of log auditing computer software and hardware and additional log auditors (out sourced) for the purpose of ascertaining that the drivers are in fact complying with the hours of service regulations. Our goals, and hopefully shared by FHWA are: increased highway safety and safety awareness; improved driver alertness; and simplified and more fair enforcement of auditing programs that does not create a disincentive to the investment in new technology. Our company and our independent contractors have invested over \$300,000 in electronic communication systems that are demanded by the shippers. We strongly believe that electronic communication systems in today's over the road tractor enhances safety by providing "911" capability anywhere in the U.S. and enhancing communication with the office and family members. If companies that have made this substantial investment are singled out by requiring their electronic records to verify hours of service compliance, I'm afraid FHWA will see a "retreat" from the trend to automate. One company I know of in Springfield, recently canceled their order for Qualcomm units (\$200,000) because of this pending rulemaking. The problem we have is that our system (HighwayMaster) is not always reliable as to the location. At times it will throw in a "bogus" location, that might only be 200-300 miles off. The systems of today are computers, built and designed by humans, and hence are subject to failures and erroneous information.

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The hours of service rules are the very foundation of the supporting document rule. All of us have learned that the current hours of service rules are based on outmoded and incorrect notions as to what causes driver fatigue; that compliance with the hours of service regulations actually causes fatigue; that the D.O.T.'s own Driver Fatigue and Alertness Study verified these facts and the need for reform. Even the FHWA sponsored driver listening sessions came out with a uniform message that the current HOS rules are causing individual driver fatigue when the drivers conform. We all agree the changes need to be based on empirical scientific data, rather than an emotional legislative or regulatory reaction yielding to various special interest groups. **We believe the only logical decision is to put this proposed rulemaking off until the hours of service rulemaking is completed.**

In the specific areas of the proposal concerning supporting documents; the data does not exist consistently as to the beginning, intermediate, and ending times of each working day, on each trip. Long haul truckload carriers routinely have trips that last 2 to 4 days, and do not necessarily fuel or travel toll roads everyday. Fuel desk receipts are notoriously inaccurate as to time (if any), and sometime date. Toll receipts are one of the least reliable documents. I know for a fact that many of the bridges on the East coast, "pre-print" the toll receipts hours before they are handed out at the booths. The Chicago toll-ways do the same thing regularly. So how are we to be held accountable by a piece of paper that is "false" from the beginning. These toll receipts and fuel receipts do not have mileage information, anyway. So to treat these supporting documents as the ultimate verification is ludicrous. We believe this current system., and the one being proposed, "self-monitoring" puts way too much power and discretion in the hands of the individual regional auditors. It is well documented that certain regions (one being near our company) have a dis-proportionate number of "conditional or unsatisfactory" ratings. We use a variety of supporting documents in our efforts to validate the logs. Using our ComData fuel purchase summary is probably one of the most reliable. However there are still glitches in that system. Example: if a person fuels at 10: 15pm on the west coast, the transaction occurs at 12: 15am the following day in the ComData computer (central time zone). So this transaction shows a different day and can be confusing. Long haul, over the road trucking simply does not produce consistently, the times and mileage's that the Docket 98-3706 is proposing.

Frankly, maybe we should all get back to the **original goal: that of preventing crashes that result in injury, death, and property damage, and ensure the equipment running on our nation's highways is in safe condition.** This Docket in our opinion

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does nothing to address either of these goals. We believe there should be some documented scientific correlation between accuracy of logs and accident rates. To our knowledge, none exists. If policy is to be sound and effective, then it must be based on fact.

It has been our experience that there is a real deficiency in the selection and sampling criteria used in an actual audit. The selection list used for sampling logs is not random. The list is comprised mainly of drivers who have had bad inspections or out of service violations; high mileage drivers, top wage earning drivers, and husband and wife teams. This procedure "skews" the results since they are not necessarily representative of the total population. Using a "sub-group" to represent the whole group violates a Statistics 101 basic principle. We urge FHWA to establish criteria and principles for selecting the group of driver's logs that will be audited. This criteria must produce results that are representative of the entire group, or be statistically correct.

In our last D.O.T. audit, or compliance review, or safety audit, or whatever the current term is, we were fortunate to have a reasonable, professional, auditor. We have an excellent safety program, and take the business very seriously. Had we **been** audited by someone who had the mission of finding violations and getting as much penalty fine as possible, the entire audit could have been much different. We still are not happy about having to pay nearly \$4,000 of our hard earned money because we had some logs that didn't agree exactly with the time. We are in strong support for a provision that would allow FHWA to sanction drivers (company or independent contractors) directly for their failure to follow the D.O.T. regulations. We had to pay this fine for violations that we try to prevent. Did this fine do anything to improve our accident ratio? Did it do anything to enhance the safety of our vehicles on the road? The answer is NO. In fact it probably destroyed the credibility of FHWA in the minds of our employees and contractors. I was real sorry to see that happen. We are hopeful that FHWA can re-establish its leadership role of creating policies and guidance that will accomplish its goal.

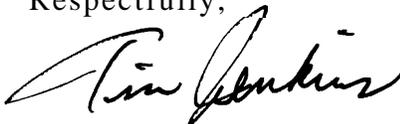
The final area in which we would like to provide comments and input concerns the status of the independent contractors and their personal business records. FHWA must recognize that owner operators and independent contractors are independent business persons, operating a small business, with their own individualized need for many of the records that FHWA purports to require a motor carrier to collect and retain. Requiring a carrier to collect and retain supporting documentation not only inhibits a contractor's

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ability to respond to governmental audits into his or her own transportation enterprise, but it can jeopardize the contractor's denial of employment status with the carrier he performs contract service for. Those receipts (or as FHWA contends), the supporting documents are the legal documentation that are required by the IRS, Worker's Compensation Boards, Labor Department and possibly other governmental entities that require "original" receipts. Those receipts are their business records and we believe that FHWA cannot overrule these other agencies.

As stated before, we believe this Docket should be tabled until the final version of the revised Hours of Service Regulations are completed and approved. We strongly believe that FHWA must define its mission and establish written goals of the agency. In accordance, future policy **must** be consistent with the mission and goals to enhance safety on our nation's highways.

Respectfully,

A handwritten signature in black ink, appearing to read "Tim Jenkins", written in a cursive style.

G. Timothy Jenkins
V.P. Human Resources and Safety